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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,264	01/16/2002	Colette Buscemi		9262

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ARTHUR I. DEGENHOLTZ
32 VANELINDA AVE
TEANECK, NJ 07666

EXAMINER

BREVARD, MAERENA W

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/16/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/050,264	BUSCEMI, COLETTE	
	Examiner	Art Unit	
	Maerena W. Brevard	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 January 2002.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) The translation of the foreign language provisional application has been received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 20, the word "means" is preceded by the words "receptacle" and "panel" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the words preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claim 11, the word "means" is preceded by the word "plastic" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 13 recites the limitation "said second panel means" in line 1. There is insufficient antecedent basis for this limitation in the claim.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim, since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Welch.

Welch discloses a utility belt comprising:

- An elongated belt member (10);
- Attachment means (15, 18);
- First receptacle (23, Figure 2); and
- First panel (11).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5, 6, and 8-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch in view of Oliver, Jr.

Welch discloses a utility belt comprising an elongated belt member (10, 13), an attachment means (15, 18), and a first panel (12) but does not teach a first receptacle mounted on the attachment means. However, Oliver teaches a receptacle (16) mounted on attachment means (belt buckle, 10). It would have been obvious to replace the belt buckle of Welch with the belt

buckle of Oliver. Doing so would provide an easily accessible means of storing and retrieving a can of tobacco.

Regarding claim 2, Welch discloses the first and second attachment means (15, 18) both disposed on the outer surface of the belt member, but not the second attachment means disposed on the inner surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to stitch the second attachment means to the inner surface of the belt member, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 5, the first receptacle is circular, not cylindrical. It would have been an obvious matter of design choice to make the first receptacle cylindrical, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 6, the receptacle of Oliver has a generally circular bottom.

Regarding claims 8 and 9, Welch discloses a second receptacle (23) having a generally flat back panel.

Regarding claim 10, Welch discloses a second panel (11) attached to the inner surface of the belt member (Figure 2).

Regarding claim 11, Welch discloses a first pocket (23) disposed on the inner surface of the belt member, but does not teach it having a plastic inner surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a lining made of plastic film within the pocket since the examiner takes Official Notice of the use of

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liners in pockets and the selection or use of plastic film to line a pocket would be within the level of ordinary skill in the art.

Regarding claims 12 and 13, Welch discloses a second pocket (24) having at least three edges attached on the inner surface of the belt member along three edges.

Regarding claims 14 and 15, the attachment means of Oliver comprises a loop member (30) and the second attachment means comprises a hook member (32), to the same degree claimed.

Regarding claims 16-18, the utility belt of Welch comprises a concave upper edge, a convex lower edge, and side edges with rounded corners.

7. Claims 3, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch in view of Oliver as applied to claim 1 above, and further in view of Herwood.

Regarding claims 3 and 19, the modified belt member of Welch discloses a third panel (25, Figure 1) disposed in general alignment with the first panel and all of the aforementioned limitations of claim 3 except, the first panel made of a flexible mesh material. However, Herwood teaches a panel made of various flexible materials, including mesh (Column 3, lines 30-37. It would have been obvious to make the first and third panels of Welch of flexible mesh material. Doing so would provide a means of visually locating objects within the pocket without removing the contents.

Allowable Subject Matter

8. Claims 4 and 7 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller, Zelnick, Sicotte et al., Kalisher, Gordon, Evans, Pearson et al., Hess, III, and Poluhowich are cited for utility belts. Bearman is cited for mesh material pockets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703/872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

MWB
Maerena Brevard
January 9, 2004


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700